

Before the
Administrative Hearing Commission
State of Missouri



BETTE A. DEVRIES/FINCHER,

Petitioner,

vs.

DIRECTOR OF DEPARTMENT OF
INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION,

Respondent.

No. 10-0288 DI

DECISION

We deny Bette A. DeVries/Fincher's ("DeVries") application for licensure as a bail bond agent because she entered an Alford plea to and was found guilty of a crime involving moral turpitude. We cancel the hearing.

Procedure

On February 24, 2010, DeVries filed a complaint appealing a decision by the Director of the Department of Insurance, Financial Institutions and Professional Registration ("the Director") denying her application for licensure. On April 2, 2010, the Director filed an answer and motion for summary decision. Our Regulation 1 CSR 15-3.446(5) provides that we may decide this case without a hearing if the Director establishes facts that (a) DeVries does not dispute and (b) entitle the Director to a favorable decision. We gave DeVries until April 23, 2010, to respond to the motion, but she did not respond.

Findings of Fact

1. On November 2, 2000, in the Circuit Court of Camden County, Missouri ("the Court"), DeVries was charged with the Class A misdemeanor of endangering the welfare of a child in the second degree.

2. On November 2, 2000, the prosecuting attorney filed an information alleging that DeVries acted with criminal negligence in a manner that created a substantial risk to the body and health of a child less than 17 years old, by encouraging the child to dress in sexually seductive clothing in the presence of a 17-year-old male, by encouraging and assisting the 17-year-old male in binding the child's hands and feet, by removing and rearranging the child's clothing in such a way as to expose the child's breasts in the presence of the 17-year-old male, by encouraging and aiding the 17-year-old male in rubbing a liquid substance on the child's breasts with his hands, by inviting the 17-year-old male into the home and allowing him to stay in the home resulting in the 17-year-old male having non-consensual sexual intercourse with the child.

3. DeVries entered an Alford plea¹ to endangering the welfare of a child. The Court found her guilty, suspended the imposition of sentence, and placed her on supervised probation for two years.

4. On November 6, 1986, DeVries, then known as Bette Williams or Betty A. Williams, was charged in the Court with the Class C felony of assault in the second degree.

5. The prosecuting attorney alleged, through an Information, that DeVries recklessly caused serious physical injury to Larry Williams by stabbing him in the chest with a knife.

¹A guilty plea that represents a voluntary choice to plead guilty despite a claim of innocence. BLACK'S LAW DICTIONARY 71 (6th ed. 1990).

6. On May 4, 1987, DeVries pled guilty to the crime of assault in the second degree. The Court accepted her guilty plea, suspended the imposition of sentence, and placed DeVries on probation for five years. DeVries was released from probation on July 3, 1990.

7. On June 24, 2009, the Director received DeVries' Missouri Uniform Application for Bail Bond or Surety Recovery License ("the application").

8. In the "Background Information" section, Question B asks: "Have you ever been adjudicated, convicted, pled or found guilty of any misdemeanor or felony or currently have pending misdemeanor or felony charges filed against you? Applicants are required to report all criminal cases whether or not a sentence has been imposed, a suspended imposition of sentence has been entered or the applicant has pled nolo contendere (no contest)."

9. DeVries answered "Yes" to Background Question B and disclosed the criminal matters. DeVries also disclosed that in 1981 or 1982 in Camden County: "I failed to pay a fine and cost for a NSF check. A warrant was issued. I paid the fine and cost and the warrant was withdrawn."

Conclusions of Law

We have jurisdiction to hear DeVries' complaint.² The applicant has the burden to show that he or she is entitled to licensure.³ We decide the issue that was before the Director,⁴ which is the application. We exercise the same authority that has been granted to the Director.⁵ Therefore, we simply decide the application *de novo*.⁶ When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application.⁷

²Section 621.045. Statutory references, unless otherwise noted, are to RSMo Supp. 2009.

³Section 621.120, RSMo 2000.

⁴*Department of Soc. Servs. v. Mellas*, 220 S.W.3d 778 (Mo. App., W.D. 2007).

⁵*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. banc 1990).

⁶*State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974).

⁷*Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

Mandatory Denial

The Director argues that DeVries does not meet the minimum qualifications of a bail bond agent under § 374.715 because she entered an Alford plea to a crime of moral turpitude within the past 15 years. Section 374.715 states:

1. Applications for examination and licensure as a bail bond agent or general bail bond agent shall be in writing and on forms prescribed and furnished by the department, and shall contain such information as the department requires. **Each application shall be accompanied by proof satisfactory to the department that the applicant is a citizen of the United States, is at least twenty-one years of age, has a high school diploma or general education development certificate (GED), is of good moral character, and meets the qualifications for surety on bail bonds as provided by supreme court rule.** Each application shall be accompanied by the examination and application fee set by the department. Individuals currently employed as bail bond agents and general bail bond agents shall not be required to meet the education requirements needed for licensure pursuant to this section.

2. In addition, each applicant for licensure as a general bail bond agent shall furnish proof satisfactory to the department that the applicant or, if the applicant is a corporation, that each officer thereof has completed at least two years as a bail bond agent, and that the applicant possesses liquid assets of at least ten thousand dollars, along with a duly executed assignment of ten thousand dollars to the state of Missouri. The assignment shall become effective upon the applicant's violating any provision of sections 374.695 to 374.789. The assignment required by this section shall be in the form and executed in the manner prescribed by the department. The director may require by regulation conditions by which additional assignments of assets of the general bail bond agent may occur when the circumstances of the business of the general bail bond agent warrants additional funds. However, such additional funds shall not exceed twenty-five thousand dollars.

(Emphasis added.) Section 374.700 provides the following definitions:

(1) **"Bail bond agent"**, a surety agent or an agent of a property bail bondsman who is duly licensed pursuant to the provisions of sections 374.695 to 374.789, is employed by and is working under the authority of a licensed general bail bond agent;

* * *

(5) **"General bail bond agent"**, a surety agent or a property bail bondsman, as defined in sections 374.700 to 374.775, who is licensed in accordance with sections 374.700 to 374.775 and who devotes at least fifty percent of his working time to the bail bond business in this state;

* * *

(8) **"Property bail bondsman"**, a person who pledges United States currency, United States postal money orders or cashier's checks or other property as security for a bail bond in connection with a judicial proceeding, and who receives or is promised therefor money or other things of value;

(9) **"Surety bail bond agent"**, any person appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings, and who receives or is promised money or other things of value therefor[.]

A licensed bail bond agent works under the authority of a licensed general bail bond agent who has the necessary net worth and meets the qualifications to be a surety.⁸ Section 374.702.3 provides:

A licensed bail bond agent shall not execute or issue an appearance bond in this state without holding a valid appointment from a general bail bond agent and without attaching to the appearance bond an executed and prenumbered power of attorney referencing the general bail bond agent or insurer.

Supreme Court Rule 33.17, entitled "Misdemeanors or Felonies - Bonds - Surety, Individual - Qualifications," provides:

A person shall not be accepted as a surety on any bail bond unless the person:

- (a) Is reputable and at least twenty-one years of age;
- (b) Has net assets with a value in excess of exemptions at least equal to the amount of the bond that are subject to execution in the state of Missouri;
- (c) Has not, within the past 15 years, been found guilty of or pleaded guilty or nolo contendere to:

⁸*Division of Employment Sec. v. Hatfield*, 831 S.W. 2d 216, 220 (Mo. App., W.D. 1992).

- (1) Any felony of this state, any state, or the United States; or
- (2) Any other crime of this state, any other state, or the United States involving moral turpitude, whether or not a sentence was imposed;
- (d) Is not a lawyer, except that this disqualification shall not apply if the principal is the spouse, child or family member of the surety;
- (e) Is not an elected or appointed official or employee of the State of Missouri or any county or other political subdivision thereof, except that this disqualification shall not apply if the principal is the spouse, child or family member of the surety; and
- (f) Has no outstanding forfeiture or unsatisfied judgment thereon entered upon any bail bond in any court of this state or of the United States.

Supreme Court Rule 33.20, entitled "Misdemeanors or Felonies – Bond – Surety Company and Agent – Qualifications," provides:

- (a) Any corporation, association, or company formed under the provisions of section 379.010, RSMo, for the purpose of making surety insurance shall be qualified to act as a surety upon any bail bond taken under the provisions of these rules upon presenting evidence satisfactory to the court of its solvency. Any such bond shall be executed in the manner provided by law.
- (b) An agent acting on behalf of such a corporation shall be subject to the qualifications set forth in Rule 33.17(c), (d), and (e), and, in addition, shall be licensed as a bail bond agent as required by law.

Mandatory Denial

The Director argues that DeVries does not meet the qualifications of a surety under Supreme Court Rule 33.17(c)(2), cited above.

DeVries entered an Alford plea to endangering the welfare of a child under § 568.050:⁹

- 1. A person commits the crime of endangering the welfare of a child in the second degree if:

⁹RSMo. 2000, in effect at the time of the offense.

(1) He with criminal negligence acts in a manner that creates a substantial risk to the life, body or health of a child less than seventeen years old; or

(2) He knowingly encourages, aids or causes a child less than seventeen years old to engage in any conduct which causes or tends to cause the child to come within the provisions of paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031, RSMo; or

(3) Being a parent, guardian or other person legally charged with the care or custody of a child less than seventeen years old, he recklessly fails or refuses to exercise reasonable diligence in the care or control of such child to prevent him from coming within the provisions of paragraph (c) of subdivision (1) of subsection 1 or paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031, RSMo; or

(4) He knowingly encourages, aids or causes a child less than seventeen years of age to enter into any room, building or other structure which is a public nuisance as defined in section 195.130, RSMo.

An Alford plea is not an admission of guilt, but is a type of guilty plea for the purpose of statutes that allow discipline for guilty pleas.¹⁰ The court also found her guilty. There will be cause for denial if we determine that endangering the welfare of a child is a crime involving moral turpitude.

In *Brehe v. Missouri Dep't of Elementary and Secondary Education*,¹¹ a case that involved discipline of a teacher's certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:¹²

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking (Category 2 crimes); and

¹⁰*Watkins v. State Bd. of Regis'n for the Healing Arts*, 651 S.W.2d 582, 583-84 (Mo. App., W.D. 1983).

¹¹213 S.W.3d 720 (Mo. App., W.D. 2007).

¹²*Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

(3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved.¹³ We find that endangering the welfare of a child is a Category I crime.¹⁴

Discretionary Basis for Denial

The Director argues that there is cause for denial under § 374.750.¹⁵

The department **may** refuse to issue or renew any license required pursuant to sections 374.700 to 374.775 for any one or any combination of causes stated in section 374.755.

(Emphasis added.) Section 374.755.1 authorizes denial for:

(2) Final adjudication or a plea of guilty or nolo contendere within the past fifteen years in a criminal prosecution under any state or federal law for a felony or a crime involving moral turpitude whether or not a sentence is imposed, prior to issuance of license date;

* * *

(6) Violation of any provision of or any obligation imposed by the laws of this state, department of insurance, financial institutions and professional registration rules and regulations, or aiding or abetting other persons to violate such laws, orders, rules or regulations, or subpoenas[.]

"May" means an option, not a mandate.¹⁶ The appeal vests in this Commission the same degree of discretion as the Director, and we need not exercise it in the same way.¹⁷ Normally we do not grant summary decision motions when the reason for denial is discretionary because we

¹³*Brehe*, 213 S.W.3d at 725.

¹⁴*Department of Health and Senior Services v. Brown*, No. 09-0030 DH (AHC 2009).

¹⁵RSMo 2000.

¹⁶*S.J.V. ex rel. Blank v. Voshage*, 860 S.W.2d 802, 804 (Mo. App., E.D. 1993).

¹⁷*Finch*, 514 S.W.2d at 614.

give the applicant an opportunity to show other circumstances, such as rehabilitation, that would convince us to exercise our discretion in his or her favor. But in this case, because we have found that DeVries is not qualified for licensure, we have no discretion to grant her a license.

Summary

We deny DeVries' application for licensure as a bail bond agent because she does not meet the qualifications for licensure under the Supreme Court Rules.

SO ORDERED on May 24, 2010.


SREENIVASA RAO DANDAMUDI
Commissioner